IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 84 OF 2000

SMT.RUKMINI V.GAONKAR AND ORS. ....Appellants

Versus

SMT.PARVATI Y.WALKE THR.HER ATTORNEY ....Respondents

MR.N.SARDESSAI,MR.SUDESH USGAONKAR FOR

Coram:- A.M.KHANWILKAR, J.

Date:- 28th November, 2003

P.C.:

The respondent no.1/landlady filed a sui t for eviction against the appellants. The trial Court passed a decree on four different grounds which has been affirme d by the Appellate Court. It is not nece ssary for me to advert to three grounds, because I find force in the submission of Shri. Usgaokar, learned Senior Counse l for the appellants, that the concurren t decree as passed by the Court below on the ground under section 46(1)(b) of th e Portuguese Decree, does not merit any interference.

The respondents clearly asserted, which fact has been established in evidence an d held to have been proved by the two Co urts below, that the lease was originall y of land for the purpose of constructin g a temporary structure to set up a Ban

d Saw Mill. According to the respondents , instead of using the premises for the said purpose, the appellants have used t he same for residence, inspite of expres s covenant in the lease deed that the l essee cannot utilise the plot for a purp ose other than the purpose for which it has been leased out, coupled with the fa ct that it infracts Clause (b) of Sectio n 46 of the Portuguese Decree, which cle arly prohibits user of the leased proper ty for a purpose different than that or those for which it is meant. The Court b elow has in fact positively found, based on admission of the appellants, that th ey were residing in one of the sheds on the subject plot. That is the finding of fact which has also been confirmed by t he Appellate Court. In that sense, there is not only infraction of the lease agr eement, as well as the ground available under Section 46 Clause (b) of the Portu guese Decree, because the premises have been used for a purpose different than t hat for which they were leased out to th e appellants.

On this ground alone the Appeal fails an d the same is dismissed.

In view of the above order the Civil App lication stands dismissed.

A.M.KHANWILKAR, J.